

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Brett Peterson, :
Petitioner(s), :
vs. : Case Number: 1:14cv604
Warden Pickaway Correctional Institution, : Judge Susan J. Dlott
Respondent(s). :
:

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Stephanie K. Bowman filed on June 3, 2015 (Doc. 10), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired June 22, 2015, hereby ADOPTS said Report and Recommendation.

Accordingly, respondent's motion to dismiss (doc. 9) is GRANTED and petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 (Doc. 1) is DISMISSED. The dismissal is without prejudice with respect to any claims by petitioner challenging his Kentucky conviction or his conviction and sentence in the Warren County criminal case. However, the dismissal will be with prejudice to the extent that petitioner alleges he has been denied parole eligibility review and challenges the conditions of his confinement at Pickaway Correctional Institution.

A certificate of appealability will not issue with respect to any of the claims that are arguably asserted by petitioner as grounds for habeas corpus relief in the absence of a substantial showing that petitioner has stated a "viable claim of the denial of a constitutional right" or that

the issues presented are “adequate to deserve encouragement to proceed further.” *See Slack v. McDaniel*, 529 U.S. 473, 475 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.3 (1983)); *see also* 28 U.S.C. §2253 (c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. §1915(a)(3) that an appeal of any Order adopting the Report and Recommendation will not be taken in “good faith,” and therefore DENIES petitioner leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.ed 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Judge Susan J. Dlott
United States District Court